

Remarks

The Applicant respectfully requests reconsideration of the present U.S. Patent application as amended herein. Claims 1, 7, 13, 20, 24, 31, 35, 39, 44, 47, and 50 have been amended. No claims have been added, withdrawn, or cancelled in this amendment. Thus, claims 1-52 remain pending in the application.

Claim Rejections § 103

Claims 1, 3-5, 7, and 9-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,617, 980 issued to Endo et al. (*Endo*) in view of U.S. Patent No. 5,724,345 issued to Guarneri et al. (*Guarneri*). For at least the reasons set forth below, the Applicant submits that claims 1, 3-5, 7, and 9-11 are not rendered obvious by *Endo* in view of *Guarneri*.

The Manual of Patent Examining Procedure (“MPEP”), in § 706.02(j), states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be both found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

(Emphasis added). Thus, the MPEP and applicable case law require that the Office action establish that a combination of references teach or suggest **all of the claim limitations** of rejected claims to sustain an obviousness rejection under 35 U.S.C. § 103.

As shown below, the Applicant respectfully submits that the Office action does not establish a *prima facie* case of obviousness.

Amended claim 1 is a method claim that recites the following:

- determining an identifier for **dynamically loadable code**;
- pushing the identifier onto a unidirectional communication link;
- determining whether an availability schedule for the dynamically loadable code;
- pushing the availability schedule onto the unidirectional communication link; and
- pushing the dynamically loadable code onto the unidirectional communication link according to the availability schedule, **wherein the dynamically loadable code is to modify the functionality of executing program code without stopping the executing program code.**

(Emphasis added). Claim 7 is an apparatus claim that recites a machine accessible medium providing instructions, which when executed by a machine, are capable of directing the machine to perform the operations of claim 1.

The Applicant traverses the rejection of claims 1 and 7 for at least the reason that both *Endo* and *Guarneri* fail to teach or suggest “**dynamically loadable code ... wherein the dynamically loadable code is to modify the functionality of executing program code without stopping the executing program code,**” as recited in claims 1 and 7.

The Office action states, in part, that “*Endo* does not explicitly identify a particular type of data to be transmitted.” Regarding the claim elements directed to “dynamically loadable code,” the Office action directs the Applicants attention to

Guarneri which is directed to a satellite-based system for distributing software updates to telephone company equipment. See, for example, the abstract. *Guarneri*, however, does not mention dynamically loadable program code at all and, in particular, does not teach or suggest **“dynamically loadable code ... wherein the dynamically loadable code is to modify the functionality of executing program code without stopping the executing program code,”** as recited in claims 1 and 7. Since neither *Endo* nor *Guarneri* teach or suggest the above-quoted claim limitations, no combination of *Endo* with *Guarneri* can teach or suggest the above-quoted claim limitations. For at least the above-stated reasons, the Applicant respectfully submits that claims 1 and 7 are patentable over the combination of *Endo* with *Guarneri*.

In addition, to establish *prima facie* obviousness the Office action must show that there is some motivation, suggestion or teaching of the desirability of modifying the reference in the manner proposed by the Office action. See *In re Kotzab*, 55 USPQ2d 1313 (Fed. Cir. 2000). The motivation, suggestion, or teaching to modify the reference must be **supported by particular findings of fact**. Broad conclusory statements standing alone are not sufficient to establish *prima facie* obviousness. The Office action states that, “it would have obvious” to combine the cited passage of *Endo* with the cited passage of *Guarneri*, without making any findings of fact supporting the conclusion. For at least the reason that the Office action does not support the quoted statement with particular findings of fact, the Applicant respectfully submits that a *prima facie* case of obviousness has not been established.

Claims 3-5 depend from claim 1 and claims 9-11 depend from claim 7. For at least the reason that dependent claims include the limitations of the claims from which they depend, the Applicant respectfully submits that claims 3-5 and 9-11 are not rendered obvious by *Endo* in view of *Guarneri*.

Claims 2 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Endo* and *Guarneri*, in further view of U.S. Patent No. 6,526,455 issued to Kamimura (*Kamimura*). Claim 2 depends from claim 1 and claim 8 depends from claim 7. For at least the reasons set forth below, the Applicant submits that claims 2 and 8 are not rendered obvious by *Endo*, *Guarneri*, and *Kamimura*.

Kamimura is cited as teaching the use of “object-oriented code with a class identifier corresponding to an object class definition.” Whether or not *Kamimura* discloses the limitations cited by the Office action, it does not teach or suggest “pushing the dynamically loadable code onto the unidirectional communication link... wherein the dynamically loadable code is to modify the functionality of executing program code without stopping the executing program code,” as recited in claims 1 and 7. Because *Endo*, *Guarneri*, and *Kamimura* each separately do not teach or suggest the above-cited claim limitations, no combination of *Endo*, *Guarneri*, and *Kamimura* teaches or suggests the invention as claimed in claims 2 and 8. Thus, the Applicant respectfully submits that dependent claims 2 and 8 are not rendered obvious by *Endo*, *Guarneri*, and *Kamimura*.

Claims 6, 12, 26, 40, and 51 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Endo* and *Guarneri*, in further view of U.S. Patent No. 6,289,980 issued to Nakajima (*Nakajima*). Claim 6 depends from claim 1; claim 12 depends from claim 7; claim 26 depends from claim 24; claim 40 depends from claim 39; and claim 51 depends from claim 50. For at least the reasons set forth below, the Applicant submits that claims 6, 12, 26, 40, and 51 are not rendered obvious by *Endo*, *Guarneri*, and *Nakajima*.

Nakajima is cited as teaching “a method of determining whether or not the loadable code is required for executing the application, and then performing the retrieval responsive to the determination.” Whether or not *Nakajima* discloses the limitations cited by the Office action, it does not teach or suggest **“dynamically loadable code ... wherein the dynamically loadable code is to modify the functionality of executing program code without stopping the executing program code,”** as recited in claims 1, 7, 24, 39, and 50. Because *Endo*, *Guarneri*, and *Nakajima* each separately do not teach or suggest the above-cited claim limitations, no combination of *Endo*, *Guarneri*, and *Nakajima* teaches or suggests the invention as claimed in claims 6, 12, 26, 40, and 51. Thus, the Applicant respectfully submits that dependent claims 6, 12, 26, 40, and 51 are not rendered obvious by *Endo*, *Guarneri*, and *Nakajima*.

Claims 13-18, 20, 24, 25, 30, 31-33, 35, 39, 44-46, 47, and 50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Endo* and *Guarneri*, in further view of U.S. Patent No. 5,937,411 issued to Becker (*Becker*). Claim 6 depends from claim 1;

claim 12 depends from claim 7; claim 26 depends from claim 24; claim 40 depends from claim 39; and claim 51 depends from claim 50. For at least the reasons set forth below, the Applicant submits that claims 6, 12, 26, 40, and 51 are not rendered obvious by *Endo*, *Guarneri*, and *Becker*.

Independent claims 13, 24, 31, 39, 44, and 50 recite the following:

...preparing a manifest for dynamically loadable code, said manifest comprising ... **an availability schedule**;

and pushing the manifest onto a unidirectional link.

(Emphasis added). Claims 20, 35, and 47 similarly recite “preparing a manifest for a Java-type archive, said manifest comprising ... **an availability schedule** and pushing the manifest onto a unidirectional link.”

The Office action states that neither *Endo* nor *Guarneri* discloses the preparation of a manifest file. *Becker* is cited as curing the deficiencies of *Endo* and *Guarneri* by teaching “a manifest file.” As discussed above, neither *Endo* nor *Guarneri* teaches or even remotely suggests the recited pushing dynamically loadable code – the Applicant respectfully submits that there is no basis for asserting some combination of these references teaches pushing dynamically loadable code. Further, regarding the recited manifest, the Examiner’s attention is respectfully drawn to the Specification at page 7 lines 8-22, at which is stated:

The manifest comprises an identifier **302** that identifies the class definition so that the class can be properly loaded during execution of an application program. In Java, the class definition identifier comprises a package name followed by a relative class name. For example, the “String” class is part of the “java.lang” package, and is therefore properly identified as “java.lang.String”.

Other programming environments may utilize other identifying data, such as the name of the class, and/or a globally unique identifier (GUID) for the class, and/or a class context, and/or class dependencies.

In one embodiment, the manifest further comprises a push schedule 304, or availability schedule, indicating when class definitions referenced within the manifest will be pushed onto a unidirectional communication link. In this embodiment, the manifest may further comprise a retrieval source 306 if class definitions may be received on one of several unidirectional communication pathways. Other related data 308 may also be stored in the manifest to facilitate routing, verification, billing, or manifest related transactions.

There is no teaching or suggestion in the cited portions of the documents relied on by the Office action of a manifest comprising push schedule 304 as discussed above. While *Becker* does teach a manifest for Java, the *Becker* manifest has no relation to the recited “manifest” for dynamically loadable code.

As stated in *Becker*:

Java employs a platform independent file format that concatenates and compresses many Java classes, image, audio and other information into one file called a JAR (Java ARchive) file. One of the main attributes of the JAR file design is to reduce the number of HTTP (HyperText Transfer Protocol) connections that need to be opened, thus reducing download times. The file format is the popular ZIP format and can be used as a general archiving tool. **The JAR archive file contains a Manifest file located at META-INF/MANIFEST.MF within the archive. This file contains information about the structure of other files within the JAR file.**

Thus, the *Becker* manifest simply describes file structure, and has no hint of an availability schedule for dynamically loadable code. While the Office action speaks to various things that the *Becker* manifest could contain (see, e.g., page 11, such speculation is respectfully suggested to be application of impermissible hindsight reasoning. What is relevant is whether *Becker* does explicitly teach the manifest taught by the present

specification as recited (or an obvious analog thereof) not whether *Becker* could teach it. The Applicant respectfully submits there is no such teaching in *Becker*.

Consequently, in addition to the distinctions over *Endo* and *Guarneri* discussed above, due to the failure of *Becker* to teach or suggest recited embodiments as suggested, the Applicant submits that the combination is unworkable and requests withdrawal of the rejections.

Claims 14-18 depend from claim 13; claims 25 and 30 depend from claim 24; claims 32-33 depend from claim 31; claims 45-46 depend from claim 44. For at least the reason that dependent claims include the limitations of the claims from which they depend, the Applicant respectfully submits that claims 14-18, 25, 30, 32-33, and 45-46 are not rendered obvious by *Endo*, *Guarneri*, and *Becker*.

Claims 19, 21, 22, 34, 36, 37, and 48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Endo* and *Guarneri*, in further view of *Becker*, and in further view of *Nakajima*. Claim 19 depends from claim 13; claims 21-22 depends from claim 20; claim 34 depends from claim 31; claims 36 and 37 depend from claim 35; and claim 48 depends from claim 47. For at least the reasons set forth below, the Applicant submits that claims 19, 21, 22, 34, 36, 37, and 48 are not rendered obvious by *Endo*, *Guarneri*, *Becker*, and *Nakajima*.

Nakajima is cited as teaching “a method of determining whether or not the loadable code is required for executing the application, and then performing the retrieval responsive to the determination.” Whether or not *Nakajima* discloses the limitations cited by the Office action, it does not teach or suggest “pushing dynamically loadable

code onto the unidirectional communication link ... **wherein the dynamically loadable code is to modify the functionality of executing program code without stopping the executing program code,”** as recited in claims 13, 20, 31, 35, and 47. Because *Endo*, *Guarneri*, *Becker*, and *Nakajima* each separately do not teach or suggest the above-cited claim limitations, no combination of *Endo*, *Guarneri*, *Becker*, and *Nakajima* teaches or suggests the invention as claimed in claims 19, 21, 22, 34, 36, 37, and 48. Thus, the Applicant respectfully submits that dependent claims 19, 21, 22, 34, 36, 37, and 48 are not rendered obvious by *Endo*, *Guarneri*, *Becker*, and *Nakajima*.

Claims 23, 38, and 49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Endo*, *Guarneri*, *Becker*, *Nakajima*, in further view of U.S. Patent No. 6,574,518 issued to Lounsberry et al. (*Lounsberry*). Claim 23 depends from claim 20; claim 38 depends from claim 35; and claim 49 depends from claim 47. For at least the reasons set forth below, the Applicant submits that claims 23, 28, and 49 are not rendered obvious by *Endo*, *Guarneri*, *Becker*, *Nakajima*, and *Lounsberry*.

Lounsberry is cited as teaching “purchasing downloadable software.” Whether or not *Lounsberry* discloses the limitations cited by the Office action, it does not teach or suggest “pushing dynamically loadable code onto the unidirectional communication link ... **wherein the dynamically loadable code is to modify the functionality of executing program code without stopping the executing program code,”** as recited in claims 20, 35, and 47. Because *Endo*, *Guarneri*, *Becker*, *Nakajima*, and *Lounsberry* each separately do not teach or suggest the above-cited claim limitations, no combination of *Endo*, *Guarneri*, *Becker*, *Nakajima*, and *Lounsberry* teaches or suggests the invention as

claimed in claims 23, 28, and 49. Thus, the Applicant respectfully submits that dependent claims 23, 28, and 49 are not rendered obvious by *Endo*, *Guarneri*, *Becker*, *Nakajima*, and *Lounsberry*.

Claims 27, 28, 41, 42, 52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Endo*, *Guarneri*, *Nakajima*, in further view of U.S. Patent No. 6,289,510 issued to Spyker et al. (*Spyker*). Claims 27-28 depend from claim 24; claims 41-42 depend from claim 39; and claim 52 depends from claim 50. For at least the reasons set forth below, the Applicant submits that claims 27, 28, 41, 42, 52 are not rendered obvious by *Endo*, *Guarneri*, *Becker*, *Nakajima*, and *Lounsberry*.

Spyker is cited as teaching Java environments and associated CLASSPATHS. Whether or not *Spyker* discloses the limitations cited by the Office action, it does not teach or suggest “pushing dynamically loadable code onto the unidirectional communication link ... **wherein the dynamically loadable code is to modify the functionality of executing program code without stopping the executing program code,**” as recited in claims 24, 39, and 50. Because *Endo*, *Guarneri*, *Nakajima*, and *Spyker* each separately do not teach or suggest the above-cited claim limitations, no combination *Endo*, *Guarneri*, *Nakajima*, and *Spyker* teaches or suggests the invention as claimed in claims 27, 28, 41, 42, 52. Thus, the Applicant respectfully submits that dependent claims 27, 28, 41, 42, 52 are not rendered obvious by *Endo*, *Guarneri*, *Nakajima*, and *Spyker*.

Claims 29 and 43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of *Endo*, *Guarneri*, and *Spyker*. Claim 29 depends from claim 24 and claim 43 depends from claim 39. For at least the reasons set forth below, the Applicant submits that claims 29 and 43 are not rendered obvious by *Endo*, *Guarneri*, and *Spyker*.

Spyker is cited as teaching Java environments and associated CLASSPATHS. Whether or not *Spyker* discloses the limitations cited by the Office action, it does not teach or suggest “pushing dynamically loadable code onto the unidirectional communication link ... **wherein the dynamically loadable code is to modify the functionality of executing program code without stopping the executing program code,**” as recited in claims 24 and 39. Because *Endo*, *Guarneri*, and *Spyker* each separately do not teach or suggest the above-cited claim limitations, no combination *Endo*, *Guarneri*, and *Spyker* teaches or suggests the invention as claimed in claims 29 and 43. Thus, the Applicant respectfully submits that dependent claims 29 and 43 are not rendered obvious by *Endo*, *Guarneri*, and *Spyker*.

Conclusion

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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